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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

2008 JUL 17 AM 10: 13

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY ____ DEPUTY

UNITED STATES OF AMERICA,	) Magistrate Docket No. '08 MJ 2187
Plaintiff,	)
v.	) COMPLAINT FOR VIOLATION OF:
Jose VALDIVIA-Jacinto,	) Title 8, U.S.C., Section 1326 Deported Alien Found in the United States
Defendant	)

The undersigned complainant, being duly sworn, states:

On or about **July 15, 2008** within the Southern District of California, defendant, **Jose VALDIVIA-Jacinto,** an alien, who previously had been excluded, deported and removed from the United States to **Mexico**, was found in the United States, without the Attorney General or his designated successor, the Secretary of the Department of Homeland Security (Title 6, United States Code, Sections 202(3) and (4), and 557), having expressly consented to the defendant's reapplication for admission into the United States; in violation of Title 8 United States Code, Section 1326.

And the complainant further states that this complaint is based on the attached statement of facts, which is incorporated herein by reference.

SIGNATURE OF COMPLAINANT
James Trombley
Senior Patrol Agent

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE, THIS 17th DAY OF **JULY 2008.**

Cathy A. Bencivengo
UNITED STATES MAGISTRATE JUDGE

CONTINUATION OF COMPLAINT:
Jose VALDIVIA-Jacinto

PROBABLE CAUSE STATEMENT

On July 15, 2008, at approximately 11:40 a.m., Border Patrol Agent J. Nizich-Boone was assigned duties for the Chula Vista Border Patrol Station area of operations. Agent Nizich was informed by San Diego Sector Communications, via Bureau radio, that a call had been received from the San Diego Police Department requesting an immigration evaluation at the San Diego Police Department, located in downtown San Diego, California.

Agent Nizich-Boone and made contact with San Diego Police Officer W. Mangum. The individual was encountered by Officer Mangum at 21000 block of Imperial Ave in San Diego, CA. This area is known to San Diego Police for narcotics. The San Diego Police Officer approached the individual and engaged in a consensual conversation. The individual agreed to a Terry Frisk and Officer Mangum encountered a syringe. Officer Mangum arrested the individual and charged him with misdemeanor 4140 BP- possession of drug paraphernalia. Officer Mangum observed that the individual did not possess any identification. The individual told Officer Mangum not to call immigration and this lead Officer Mangum to believe that the individual may be residing in the United States illegally. Agent Nizich-Boone approached the individual and identified herself as a United States Border Patrol Agent and questioned the subject as to his citizenship and nationality. The individual, later identified as the defendant **VALDIVIA-Jacinto, Jose** stated that he was a citizen and national of Mexico with no immigration documents that would allow him to be in or remain in the United States legally. On July 15, 2008, at approximately 12:00 p.m., Agent Nizich placed VALDIVIA under arrest and transported him to the Chula Vista Border Patrol Station for processing.

Routine record checks of the defendant revealed a criminal and immigration history. The defendant's record was determined by a comparison of his criminal record and the defendant's current fingerprint card. Official immigration records of the Department of Homeland Security revealed the defendant was previously deported to **Mexico** on **May 16, 2006** through **Hidalgo, Texas.** These same records show that the defendant has not applied for permission from the Attorney General of the United States or his designated successor, the Secretary of the Department of Homeland Security, to return to the United States after being removed.

The defendant was advised of his Miranda Rights and was willing to make a statement without an attorney present. The defendant stated the he is a citizen and national of Mexico and that he does not possess any documents allowing him to enter or to remain in the United States legally.